THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION Nos.27968 of 1997 and 3796 of 1998

Dated:14.06.2007

Between:

M.Subbaiah, S/o.Venkaiah and others.

…Petitioners

and

The Government of Andhra Pradesh, Rep. By its Principal Secretary for Social Welfare, Secretariat, Hyderabad, and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO
AND
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION Nos.27968 of 1997 and 3796 of 1998

COMMON ORDER: (Per the Hon'ble Sri Justice V.V.S.Rao)

As the subject matter involved in these two Writ Petitions is one and the same, they are disposed of by this common order. For the sake of convenience, the parties in these Writ Petitions are referred to as per their status in W.P.No.3796 of 1998.

The land admeasuring Acs.2.17 guntas in Survey No.51 and another piece of land admeasuring Ac.1.25 guntas in Survey No.58 situated at Polaram Village, Hamlet of Komararam, Yellandu Mandal in Khammam District is the subject matter of these Writ Petitions. The petitioner lodged a complaint with the third respondent, being LTR Case No.20/YLD/87, requesting for restoration of the said land alleging that respondents 4 to 6 herein are in occupation of the land. By an order dated 22.06.1989, the third respondent passed orders under Section 3(2) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959) ('Regulation' for brevity), ordering ejection of respondents 4 to 6 herein. The third respondent also ordered to restore the land to the petitioner herein, who claims to be a backward class person. This was challenged

before the Agent to the Government-cum-District Collector, Khammam, second respondent herein, in C.M.A.No.14 of 1989. The appellate authority passed orders in C.M.A.No.14 of 1989 on 29.12.1992. The same was allowed placing reliance on an agreement dated 05.11.1963 under which respondents 4 to 6 herein allegedly purchased the subject land from Modapalli Venkatesam, S/o.Varadaiah. The Agent opined that as the transaction was prior to coming into force of the Regulation, the same stands excluded from the provisions of the Regulation. Be that as it is, the petitioner herein preferred a revision under Section 6 of the Regulation.

The Government of Andhra Pradesh, first respondent herein, rejected the revision petition and passed orders in G.O.Ms.No.118, Social Welfare (F2) Department, dated 28.08.1997. The Government observed that the land admeasuring Acs.3.36 guntas in Survey Nos.51 and 58 of Komararam Village shall vest with the Government for assignment to landless poor tribals, and that neither the petitioner nor respondents
4 to 6 are entitled for the same. Feeling aggrieved by the said Government Order, the present Writ Petition is filed seeking its invalidation.

W.P.No.27968 of 1997 was admitted on 29.10.1997, and W.P.No.3796 of 1998 was admitted on 12.02.1998. The respondents have not filed counter affidavit. Therefore, when the matters were heard on 08.06.2007, we directed the learned Government Pleader for Social Welfare to produce the original record from the Offices of respondents
2 and 3. We also directed the third respondent to be present in the Court. In obedience thereto, Dr.Budda Prakash M.Jyoti, IAS, Project Director ITDA, Khammam, who holds Full Additional Charge of the post of Special Deputy Collector, Paloncha, Khammam District, is present in the Court along with necessary files. We have perused the files thoroughly.

Learned Counsel for the petitioner submits that the provisions of Regulation have no application, and the orders passed by the appellate authority and the revisional authority are without jurisdiction. He submits that the petitioner never sold the land to any person, much less, to respondents 4 to 6, and therefore, the orders passed by the appellate authority and the revisional authority are erroneous.

Learned Counsel for the petitioners in W.P.No.27968 of 1997, which is filed by respondents 4 to 6, submits that the petitioners in W.P.No.27968 of 1997 purchased the land and are cultivating the

same duly paying the necessary revenue to the authorities. Learned Counsel further submits that the Agent relied on the alleged agreement dated 05.11.1963, which was not pleaded by respondents 4 to 6 before the original authority, and therefore, no credence can be given to the same. According to the learned Counsel, from 1963 onwards, respondents 4 to 6 are in continuous possession and if the land is not restored to them, it would be miscarriage of justice.

Learned Government Pleader has placed strong reliance on the deposition dated 27.04.1988 given by respondents 4 to 6 before the third respondent in LTR Case No.20/YLD/87 in support of the contention that the petitioner sold the land in 1971 to respondents 4 to 6, and therefore, the transaction attracts the Regulation. He also placed reliance on the pahanies for the years 1958 to 1962 and 1969-1970 showing Modapalli Venkatesam as occupant and the petitioner as the cultivator for the years 1958-1959 and 1959-1960. It is also the case of the respondents that in the subsequent years the name of the petitioner was not mentioned in the pahanies. Reliance is also placed on the alleged agreement dated 05.11.1963 under which respondents 4 to 6 purchased Ac.0.20 guntas of land in Survey No.49, Acs.2.00 in Survey No.51, Ac.1.01 gunta in Survey No.58 and Ac.1.39 guntas in Survey No.105, totally admeasuring Acs.5.20 guntas, in support of the submission that the land in tribal area was purchased by the respondents.

The petitioner himself approached the third respondent and gave a complaint, based on which, proceedings were initiated for eviction of respondents 4 to 6, who are non-tribals. At that time, respondents 4 to 6 gave a statement to the effect that they purchased the land from the petitioner. Prompted by this, the third respondent ordered restoration of land to the petitioner, which was set aside by the appellate authority on the ground that the transaction being one prior to 01.12.1963 there was no prohibition for transfer of land in scheduled areas. The Government, however, did not agree with the view on the ground that the petitioner herein had no right over the subject land, and therefore, the land should be assigned to landless poor persons. When the Government passed this order, the purport and rigor of the provisions of Regulation were very much kept in view. One should not forget that the law prohibits the transfer of immovable property by a person whether such person is a member of scheduled tribe or not. Therefore, whether respondents 4 to 6 purchased the land from Modapalli Venkatesam as alleged by them before the Agent or they purchased from the petitioner as they deposed before the third respondent, the

transaction is treated as void by law. There cannot be any exceptions to a Rule when transaction is declared *ab initio* void. The only way for any transferee or transferor to get out of the provision is to show that the transaction was prior to 01.12.1963. Of course, respondents 4 to 6 relied on the agreement, dated 05.11.1963, but after thoroughly examining the same, we are, however, not able to give any importance to the same for reasons more than one. There are interpolations visible to the naked eye, and the boundaries of the property, which was sold and purchased, are not clear, and the original of the agreement was not produced before the Agent to the Government. Therefore, the transaction in question with regard to the subject land is certainly regulated by the provisions of the Regulation. In that view of the matter, we do not find any infirmity in the impugned order passed by the Government.

The Writ Petitions are devoid of any merits and are accordingly dismissed with costs.

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(V.V.S.RAO, J)

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(G.V.SEETHAPATHY, J)

14.06.2007
vs